MEMO

To: Teams in 2006 Annual Student Environmental Negotiations Competition
From: Negotiations Committee, Environmental Law Section
Subject: Supplemental Readings on Negotiation Strategy and Tactics

Students who have not taken a negotiations course probably will benefit from reading GETTING TO YES by Roger Fisher and William L. Ury. This short book is an excellent introduction to the theory and practice of negotiations. Most books about negotiations, however, overstress either the cooperative (win-win) or the competitive (negotiation as war) aspects of the negotiations process. GETTING TO YES falls into the first camp. To counterbalance the book's emphasis on cooperation, we also recommend that students coming to the competition without a course in negotiations read the three enclosed articles, which address power and the competitive aspects of negotiations:

William McCarthy, The Role of Power and Principle in *Getting to Yes;*

Roger Fisher, *Beyond Yes;* and

Roger Fisher, *Negotiating Power; Getting and Using Influence*.

These articles also can be found in NEGOTIATION THEORY AND PRACTICE, edited by Breslin & Rubin (1995).

Negotiating Power: Getting and Using Influence

Roger Fisher

Getting to YES (Fisher and Ury, 1981) has been justly criticized as devoting insufficient attention to the issue of power. It is all very well, it is said, to tell people how they might jointly produce wise outcomes efficiently and amicably, but in the real world people don't behave that way; results are determined by power — by who is holding the cards, by who has more clout.

At the international level, negotiating power is typically equated with military power. The United States is urged to develop and deploy more nuclear missiles so that it can negotiate from a position of strength. Threats and warnings also play an important role in the popular concept of power, as do resolve and commitment. In the game of chicken, victory goes to the side that more successfully demonstrates that it will not yield.

There is obviously some merit in the notion that physical force, and an apparent willingness to use it, can affect the outcome of a negotiation. How does that square with the suggestion that negotiators ought to focus on the interests of the parties, on the generating of alternatives, and on objective standards to which both sides might defer?

This article is a brief report on the present status of some thinking about negotiating power. It represents work in progress. After briefly suggesting a definition of negotiating power, and the kind of theory for which we should be looking, I set up two straw men — that are perhaps not made wholly of straw: (1) the basic way to acquire real power in a negotiation is to acquire the capacity to impose unpleasant physical results on the other side; and (2) an effective way to exercise negotiating power is to start off by letting the other side know of your capacity to hurt them and of your willingness to do so. Both propositions seem wrong. In the central body of the article, I discuss six elements of negotiating power that can be acquired before and during negotiation, only one of which is the capacity to make a credible threat. Finally, I consider the sequence in which those different elements of power are best used to maximize their cumulative impact, and explore the debilitating effect of making threats at an early stage.

How Should We Define Negotiating Power?

It seems best to define "negotiation" as including all cases in which two or more parties are communicating, each for the purpose of influencing the other's decision. Nothing seems to be gained by limiting the concept to formal negotiations taking place at a table, and much to be gained by defining the

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The Role of Power and Principle in *Getting to YES*

William McCarthy

Editor's note: Lord McCarthy's article is a discussion of Getting to YES *by Roger Fisher and William L. Ury (Boston: Houghton Mifflin, 1981). Roger Fisher's reply follows.*

Getting to YES is a fascinating work, designed as a primer for bargainers of all kinds. It urges the adoption of what is termed "principled negotiation," in the form of a series of maxims or principles. As an academic student of industrial relations who has been much involved in the process of mediation and arbitration in labor disputes in the United Kingdom since 1968, my task is to say how far I agree with the ideas expressed and the assumptions that lie behind them. I can best do this by considering first those maxims with which I am in general agreement. I next discuss others about which I have reservations. I end with a number of more substantial criticisms and doubts.

Areas of Agreement

Getting to YES puts forth at least eight propositions which I would recommend without reservation to bargainers on both sides of industry. These do not include all the things I like about *Getting to YES*, but they cover the most important and are indicative of its general approach.

The first is that one should try to put oneself in the position of the person on the other side of the bargaining table. This must be right. Much time is wasted in mediation inducing people to listen to the argument of the other side, so that the area to be bridged can at least be objectively assessed.

Second is the stress on the need to move away from "position bargaining" so that bargainers can focus on interests rather than positions. Mediators and arbitrators are often required simply because the parties have been unable to do this for themselves.

Third is the suggestion that one should seek to generate as many options as possible so that the parties are not hemmed in by a particular alternative adopted early in the negotiation. One of the main tasks of third parties is to generate options, which is why it is essential to take the parties through all that has been discussed before, even though this can be mutually exhausting. Often one side or another is overly concerned to justify some position it

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adopted in the past and which has contributed to the present impasse. Once this has been set aside, it may be possible to open up new prospects or return to discarded solutions.

This maxim is related to another I agree with, which is that the parties should look forward rather than look back. All collective agreements have implications for future behavior, so that it is essential to try, where possible, to improve future relationships, and not only those between the spokespersons themselves. The impact of a proposed agreement on constituents, and whether or not it will help them to solve future disputes, is also a critical issue. Looking to the future in this way is the best safeguard I know against Carthaginian solutions, that is, those which impose defeats on one side and which both sides live to regret.

The fifth point of agreement with *Getting to YES* is the injunction that one should never begin by assuming that all that is available is a "fixed pie." The fact that this so often turns out to be the case is the best possible reason for not making this assumption. For unless one is always trying to find ways of enlarging the pie, future relations between the parties will probably deteriorate. It is also the case that exploring the conditions under which the pie might be enlarged is usually educational. Both sides come to realize more clearly how the other is hemmed in by existing circumstances. Since this is usually the result of external factors, such as the state of the competition in the product market or the level of relevant pay settlements in other parts of the labor market, the parties come to appreciate the boundaries of their discretion and choice in a more relaxed and realistic mood.

Then there is the admirable concept of the BATNA (Best Alternative to a Negotiated Agreement). I find this an improvement on the conventional notion of a "bottom line," for the reasons stated in *Getting to YES*. It focuses attention on the fact that if the parties fail to agree, they must decide what to do next. This is often given insufficient attention by those who are overly concerned with proving that their original position was justified or right. BATNA is also a more flexible notion than bottom line and can be changed without invoking the same feelings of guilt. It is also true that the alternative to disagreement is often indeterminate and difficult to quantify. The sooner both sides start thinking about their BATNAs, the better.

So I come to my seventh maxim, which is that one should not reveal one's BATNA unless it is better than the other side thinks it is. An evidently true proposition, although in collective bargaining the other side may not provide a frank assessment of their view of your BATNA. Still, this is an option to consider: Do we have reason to believe that our opponents underestimate the consequences of disagreement? And, most important of all, will they believe us if we tell them what we intend to do if they refuse to move?

A large part of the mediator's job consists of getting the parties to accept the truth about the other side's intentions. So much that is said is part bluff, part bravado, and part propaganda for constituents. Once again, the sooner the parties' spokespersons consider issues of this kind, the better.

Finally, I come to my eighth and final maxim: "Separate the people from the problem." Fisher and Ury offer an excellent compression of the principles which third parties involved in the settlement of labor disputes practice all the time. What they propose, as I see it, goes beyond putting yourself in the

other person's shoes. They emphasize instead the importance of moving from "points of view" in order to focus on the "problem in its own right," which those around the table are asked to address in an "objective" way. Of course, the parties will remain aware of personal and partisan concerns, for these are part of the problem, but it can help to get to yes if these can be looked at from a common viewpoint.

The most obvious way in which a mediator seeks to induce such an atmosphere is by asking the other party, "What would you do now if you were me?" This is really just an invitation to objectify the problem, and it often produces a helpful suggestion if asked at the right moment.

All these maxims in *Getting to YES* I see as part of a useful drill or model which would-be bargainers should practice and commit to memory. Like all drills, they look obvious enough, but unless they are fully understood and accepted they will be forgotten in the heat of the moment. To some extent, natural bargainers will observe such maxims without training or experience, but even they may lapse from time to time and develop bad habits. It helps to objectify and describe bad habits in the way that Fisher and Ury do in their book, which offers those of us who teach and practice in this area a useful primer that is easy to understand and refreshingly free from jargon.

Some Reservations

Unfortunately, I am unable to accept other suggestions in *Getting to YES* without qualification. The first is the suggestion that negotiators should always seek to maintain or improve long-term relationships between the parties. There are several problems here. First, union members, for example, may be relatively unconcerned with the long term; they may be demanding the best that can be obtained now. Leaders may think it unwise to press home short-run advantages, if only because this will encourage "hawks" on the management side and lead to long-term reprisals, but they may not be in a position to give their reasons for counseling caution. Similarly, on the employer's side, the "doves" may feel that if good relations are to be preserved, one more attempt to settle should be made by improving on the existing offer. Yet their superiors may decide, quite rightly from their tougher point of view, that short-run financial and market constraints rule this option out.

Even mediators and arbitrators can make mistakes if they believe that part of their task is to concern themselves with a long-run improvement in relationships. Often what the parties want is a way out of an immediate impasse, and long-term considerations may make this more difficult. Of course a mediator can always point out the long-term dangers of what appears to be an acceptable compromise; but it does not follow from this that those most immediately affected will be thankful for this advice.

Thus while I am only too willing to admit that all agreements are attempts to regulate the future and that the best agreements have in them an element of long-term reform, it seems to me that Fisher and Ury's model of negotiation gives too much emphasis to the importance of the long run. I know of many disputes which, unfortunately, were dominated by the need to avoid or terminate immediate conflict, even at the cost of worsening long-term relations.

Second we come to the maxim that one should set aside trust. This is a wise counsel insofar as it warns the would-be negotiator against those who constantly ask you to trust them. As an experienced union leader once told me, "A man who says 'trust me' is a man who cannot be trusted." The appeal to trust is no substitute for an argument, or for the specifications of areas of mutual interest.

But I suspect that Fisher and Ury mean more than this. They seem to offer a model of the bargaining process where trust has no significant role to play. I find this difficult to accept. There is a sense in which trust is essential if the chances of agreement are to be maximized. As Willy Loman said of optimism, "it comes with the territory." Once trust is totally lost between two bargainers, one of them should be replaced.

What I mean by "trust" is that the other parties have given you reason to believe that they will do their best to guard your back and will also respect confidences and seek to persuade their own sides to accept alternatives that have been jointly agreed upon. Trust is fostered among bargainers when these and related norms are observed. It probably begins with an appreciation that the other person understands your role and admires your skill. Where trust is sufficiently strong, it even survives the odd stab in the back. Yet it can be destroyed by a single act of betrayal, such as using confidences as a reason for going back on an agreement, or feeding wrong information with intent to deceive disguised as advice to a "friend."

Trust is important partly because it fosters informal contacts and a readiness to expose one's hand. To gain trust a mediator may have no alternative but to offer confidences — although only personal thoughts should be offered, and then in a way that is fair to both sides. Because of considerations of this kind, I would argue that the role of trust is underestimated in the Fisher-Ury model.

But I have even stronger reservations about their reference to the need for a "wise agreement" that "takes community interests into account." Once again constituents are not always prepared to limit their options in this way. Of course, the spokesperson realizes that in the long run those who are thought to ignore community interests too blatantly will lose public support and may find themselves in trouble with the government of the day. But this is not really the business of the mediators or arbitrators, unless they operate within a framework fixed by government which instructs them to take these things into account (for example, as interpreters of the norms of statutory incomes policy).

In any case, in collective bargaining both sides habitually argue that their demands are compatible with community interests; it is the other side which is being narrow or selfish. To attempt to decide how far either side is right in relation to questions of this kind is to import into the dispute an imponderable which will never be agreed upon (for example, the effect of a particular wage settlement on the general level of wage movements; or the consequences of a strike on public welfare). It may be easier to gain agreement if matters of this kind are not raised and parties concentrate instead on reaching a settlement which "balances" the felt interests of those immediately involved in the narrowest possible way.

I also doubt the general applicability of the maxim, "Whenever you can,

avoid starting from extremes." It is certainly not usually observed as a rule in collective bargaining. This is partly because of the way in which unions formulate claims. These are based on grievances arising out of the administration of the existing contract, plus expectations and fears about future developments and recent settlements. As a result, each group insists on including in a claim items which are of particular importance to it. Nobody sees the need to argue in terms of priorities, or overall costs, since this might well diminish overall solidarity. The result is a total claim that few people take quite seriously, but this is seen as a part of the essential ritual of collective bargaining.

Similar pressures operate on the management side, where resistance to particular items in the claim varies from one part of management to another. Once again it is widely appreciated that many of these extreme positions will subsequently need to be modified.

All this is not to deny that overly ambitious claims and unrealistic offers can generate misunderstanding among those who accept them at face value. But it does not follow that such difficulties can best be avoided by opting for "moderation" or "realism" from the outset. This can lead to even more confusion.

What really matters is that there be a link between opening positions and the real power situation — as conceived by both sides. What is disastrous is a situation in which claims become more ambitious as the power to achieve them erodes.

Finally, I have doubts about the general advantages of what are termed "brainstorming sessions" as a way of "inventing options." I have found procedures of this kind of limited use. The problem is that they are often embraced as a way of avoiding hard decisions. In labor relations, especially on the management side, there is a tendency to believe that unpalatable courses of action can be avoided, "if only we think around them for long enough." By the time third parties become involved, the need often is for a rather different initiative. Two or three options, long known and debated, need to be costed out in great detail, and their likely consequences for other groups carefully considered. It is the grisly business of getting down to this kind of work that leads some bright spark to suggest another spot of brainstorming. The good bargainer is the one who knows when this has become a substitute for action.

Disagreements

So far I have been arguing that ways could be found to modify the maxims discussed above so that their application would be limited to particular situations. I turn now to a number of others where the differences between the authors and myself may not be so easily resolved. It is as well to begin with a relatively minor point, since it helps to illustrate one of my underlying doubts. This concerns the advocacy of what is termed "negotiation jujitsu."

I think this is based on a false analogy. In negotiation you cannot turn power on its originator, which I take to be the essence of the reference to jujitsu. The examples Fisher and Ury offer are not really examples of this process, deriving as they do from attempts to deal with bad manners, or attempts to undermine personal confidence. For the most part, the most

effective ploy in these cases is to ignore them — to pretend one has not noticed. Take the man who has coffee spilled over him, or the woman who is seated facing the sun. What is the point of suggesting that these things have been done deliberately? What happens if the perpetrator denies this and decides to take offense? You have produced another dispute, which is about personal relations rather than the problem which needs to be solved. I suspect that the notion of negotiation jujitsu, like the related concept of "dirty tricks," derives from a desire to admit that negotiation is not quite as rational and high-minded as certain parts of the book assume it is, without facing the main reason why this is so.

I can best raise what I believe to be the main problem by suggesting that parts of *Getting to YES* seem to be directed at the unaggressive or "not natural" bargainer, especially one who is in a relatively weak position. It aims to raise such bargainers' confidence by providing a suitable drill or discipline to follow. I am not certain how far the authors had in mind the problems of naturally aggressive and self-confident negotiators, especially those who believe they hold relatively strong positions.

Consider the bargainer who has clearly absorbed the main thrust of the argument and replies to a somewhat unprincipled opponent in the following way:

> I don't respond to pressure, I just respond to principle. If I responded to pressure, I would lose my reputation as a negotiator. I must insist on deciding by objective standards.

I have to say that I find this individual a somewhat unrealistic and unrepresentative figure. I do not think that many people would find themselves thinking or acting in this way, unless they had very little power and nothing but an obstinate belief in the merit of their own case. Yet in collective bargaining, it is often clear enough that one side or the other is in the stronger position, which is not the same as having the best of the argument. In circumstances of this kind, both sides realize that if agreement is to be reached a way must be found of coming to terms with this fact. Bargaining is seen as not just a matter of logic and argument. As it has been put to me, "The name of this game is poker, not chess."

Part of the problem is that *Getting to YES* offers no direct analysis of the role of power — or the way the cards are dealt. I take it that this is because the authors prefer to deal with this aspect of negotiation via their notion of the BATNA. A party, or player, is powerful if he or she has a strong BATNA. Those who feel themselves to be in a weak position are advised: "develop your BATNA." I can see that this is good advice, but it does not take us very far. One wants to know more about the factors which affect the relative strength of rival BATNAs and how to decide between them. One looks in vain for an analysis of power and how to maximize it.

Here it may help if I give a short illustration drawn from collective bargaining. Where unions claim an increase in pay which management refuses to concede, they face a choice of either lowering their sights or giving notice of their intention to take some form of industrial action. In the words of Fisher and Ury, they consider their BATNA.

But often the problem is that it is impossible to say what the effect of a particular form of action will be, on either management or union members. Much may depend on the reaction of customers, competitors, suppliers, and other groups of employees. Still more may turn on the effect a prolonged withdrawal of labor has on the determination and morale of strikers and their families.

Sometimes the sum total of all these factors combines to convince one side or the other that "time is on our side." If this is the case, that side will not favor an early settlement, since it will feel that the longer the dispute lasts, the more it may be able to impose its will on the other side. At other times, the balance of power will not at first be clear to either side, or it may shift during the course of a struggle. As a result, it may be necessary to endure long periods of conflict, inflicting a great deal of damage on both sides, until the power position emerges.

The point here is that however long this process takes, the outlines of an acceptable settlement, in the end, will turn on the development of a shared view about the outcome of what can only be termed a "power struggle" — that is, the ability of one side to inflict more damage on the other than it receives in return. This struggle has its own logic and rationale, and the job of the good negotiator is to anticipate its outcome and secure the best deal possible when the power position of his or her own side is at its height. But this entails a willingness to recognize and respond to pressure, or the awareness of its existence, rather than an insistence on principle. It also has very little to do with objective standards, yet those who can do it best have the highest reputation among bargainers.

What books like *Getting to YES* can do is to help bargainers limit the need for what might be termed "ordeal by power." By observing the book's maxims, they can come to understand more clearly their true differences, the size of the gap that must be bridged, where possible by recourse to argument and persuasion. They can learn how to move from a wasteful discussion of past positions to a fruitful consideration of future interests. They can explore possible alternatives, within limits set by a mutual appreciation of external constraints. As a result, they may be less likely to begin by making vague and unconvincing threats, followed by unnecessary and damaging concessions.

But in the area of collective bargaining, at least, I know of no set of maxims or principles which will enable any of us to escape from the limits set by a given power situation. And sometimes there may be no other way of establishing these limits other than by conflict. Even where this situation is avoided, it will usually be because those involved are skilled at reading the signs: that is, they are able to assess the likely consequences of an ordeal by power, so that this can be taken into account in arriving at a settlement. Consequently, another and equally important primer needs to be written about what to look for in attempting such an assessment, for matters of this kind are not discussed in *Getting to YES*.

Which brings me to my final doubt. One of the attractions of the study is that the authors import their examples from a bewildering variety of dispute situations: the buying of books, family quarrels and neighborhood squabbles, corporate and governmental disagreement, collective bargaining, and international conferences — everything from haggling in street markets to the

roots of East-West conflict. Yet they assume, rather than argue, that the factors which make for effective negotiation in all these circumstances are the same. Consequently, a common set of maxims, based on a common model, can be developed. I find this a fascinating notion, but I am not certain how far it is feasible.

Here I can only speak with any authority on labor disputes, but they seem to me to exhibit certain features which are not equally present in many other kinds of disagreement. To begin with, ours is undoubtedly a game which continues: There is a sense in which the terms of the bargain are renewed every day, so that it is unwise to exploit the passing advantage of a short-term power position. It is also a representative activity, where power structures and responsibilities differ on each side in a way that conditions the freedom of the spokespersons to commit their constituents to the agreement. When agreement is not possible, the alternatives available, at least on the union side, are also rather special, involving an attempt to deny supply, rather than sale, to another bidder. When sanctions are involved, they are difficult to determine in advance and apt to change through time. The process is also "political" in a rather special sense, since the union's aim is to narrow management's area of discretion, substituting predictability and "joint regulation" for what employers usually term their "right to manage." In addition, the underlying relationship between the parties is seen by many participants as essentially ideological or class-based.

This is not the place to say how, and to what extent, features of this kind create the need for a more tailor-made model of how to get to yes in collective bargaining. My point is simply that the factors to bear in mind are not necessarily the same, or of equal weight, as those involved in haggling over carpets in Quincy Market or deciding the Law of the Sea.

All of which is to suggest that the authors of *Getting to YES* have raised more questions than they have settled, most notably in relation to the role of power as principle and the differences between them in various kinds of dispute. What is needed now is further investigation and research to throw light on two related questions: (1) the factors influencing the generation and optimization of power in different bargaining situations; and (2) the relative importance of power and principle in determining the outcome of different areas of dispute. Meanwhile we look forward to the second edition.

Beyond *YES*

Roger Fisher

An author is naturally pleased to have as experienced and distinguished a labor relations professional as Lord William McCarthy find that *Getting to YES* contains useful ideas. His generous comments are deeply appreciated.

But even more valuable are his criticisms and questions. For as useful as *Getting to YES* may be, it falls far short of what is needed. Improving the theory and practice of negotiation and mediation will require an unending openness to both skepticism and new ideas. Let me skip all the nice things Lord McCarthy said and try to build on some of his qualifications and questions. Rather than defend what William Ury and I wrote, I will try to spell out what — stimulated by Lord McCarthy — I now think.

1. ". . .**Negotiators should always seek to maintain or improve long-term relationships between the parties.**" If that is what we said, it is certainly wrong. As Thomas Schelling has pointed out to me, when I negotiate with a panhandler, my primary objective may be to avoid any future relationship whatsoever.

Relationship issues, however, do constitute an important part of any negotiation. Negotiators benefit from consciously considering them.

It helps to recognize that there is a significant difference between relationship issues such as communication, mutual understanding, respect, acceptance, approval, trust, anger, fear, and affection on the one hand, and on the other, substantive issues such as price, delivery dates, conditions, specifications, and terms. The fact that the two sets of issues are likely to have an impact on each other just as reptiles and mammals interact, does not refute the validity or utility of the distinction.

Most negotiators would be well advised to consider whether their interest in a short-term, substantive outcome is in fact greater than their interest in good long-term relations. Sometimes a one-time sale to a stranger for a high price will be more valuable than an ongoing relationship. But for bankers, governments, trade unions, businesses, families, and many others, the ability to engage easily in future transactions is usually far more important than the substantive result of any one deal. Lord McCarthy has had far more experience with labor negotiations than I, but my own experience suggests that the danger that participants will pay too much attention to short-term considerations is greater than that they will over-assess the value of a long-term relationship.

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At the Harvard Negotiation Project, we have developed two rules of thumb designed to avoid two common negotiating errors that mingle substantive and relationship issues: (1) Don't threaten a relationship as a means of trying to coerce a substantive concession. To do so will not work against a wise negotiator and damages the relationship whatever the outcome. (2) Don't try to buy a good relationship by making concessions that are unjustified on their merits. (Appeasement rarely works. You are likely to get more of any bad behavior you reward.)

2. ". . .We come to the maxim that one should set aside trust." Lord McCarthy is obviously right in emphasizing the important role which trust can play in a negotiation. To the extent that I am trusted, I am more powerful; others will be influenced by what I say. And in deciding whether or not to enter into a particular agreement, I will be influenced by the extent to which I can rely on the statements and promises of those on the other side.

Trust, however, should not be overloaded. Other things being equal, the less that an agreement depends on trust, the more likely it is to be implemented. That it is convenient to trust someone is no reason to do so. Behaving in a way that makes oneself worthy of trust is highly useful and likely to be well rewarded. But the more one trusts the other side, the greater the incentive one provides for behavior that will prove such trust to have been misplaced.

3. Must a "wise settlement" respect community interests? Lord McCarthy is no doubt right that it will sometimes be easier for a mediator to reach agreement if no attention is given to the interests of the community. But wouldn't a mediated agreement be better if it did? By what standards should we judge agreements that have been reached "voluntarily," that is, with no illegal coercion? Statutes that set minimum wages, safe working conditions, maximum hours, and limit child labor — to name but a few instances in which the community imposes limits on freedom of contract — demonstrate that society has an interest in the content of agreements as well as in settling disputes.

We members of the community would like negotiators and mediators to pay some attention to community interests even where their failure to do so is not illegal. Other things being equal, the more an agreement takes into account the legitimate concerns of others, the better it is for all of us.

4. Should one negotiate by starting with an extreme position? There is little doubt that if both parties are playing the haggling game of positional bargaining, the best position to start with is often an extreme one. Rather than denying that statement, we question whether haggling is the best game to play.

Getting to YES probably overstates the case against positional bargaining. The New York Stock Exchange demonstrates that thousands of transactions a day can successfully be concluded without discussing interests and with little concern for ongoing relationships. Yet most cases of what we all think of as negotiations involve more than one issue and also involve ongoing matters of implementation or future dealing. In such cases, I would suggest that taking an extreme position is rarely the best first move. Coming up with an extreme and unilaterally determined answer before understanding the

other side's perception of the problem involves risks to one's credibility, to a cooperative problem-solving relationship, and to the efficient reaching of an agreement.

5. Brainstorming. Creative thinking is no substitute for the hard work of selecting among various options. That is certainly true, yet wise decision-making between adversaries, within a group, or by a single individual involves both generating possibilities and judging among them. Early judgment inhibits creativity. Of course, any valuable activity can be pursued too far. Nothing exceeds like excess. Yet I remain convinced that most negotiators will benefit from the maxim: Invent first; decide later.

6. "One looks in vain for an analysis of power and how to maximize it." Lord McCarthy correctly points out that the discussion of power in *Getting to YES* falls short of what is needed. A first attempt toward remedying that situation has already been undertaken (see my "Negotiating Power: Getting and Using Influence," which is also printed in this book.) Let me comment here more briefly.

Power — the ability to influence the decisions of others — is important in every negotiation. And negotiators need help in understanding how to optimize their power and how best to use it. Yet I do not agree with Lord McCarthy's proposition that the outcome of a power struggle will depend upon "the ability of one side to inflict more damage on the other than it receives in return." An openness to reason, combined with a principled refusal to yield to blackmail, can change the game. If, for example, a future U.S. president were to seek Vatican support for contraception as a means of limiting world population, would the outcome of a power struggle reflect the superior ability of the United States to destroy the Vatican with nuclear weapons? I doubt it. A papal refusal to listen to such threats would be convincing.

Negotiators, like other people, are influenced by more than risk of damage. Negotiators, like others, respond to logic, facts, friends, ideals, law, precedent, and persuasive rhetoric. It would be a mistake to assume that the final and decisive ingredient of negotiating power is either fear or a nice calculation of the relative costs of not reaching agreement.

7. Are all negotiations the same? Lord McCarthy questions the extent to which one can safely generalize about the negotiation process, advancing hypotheses that are supposed to apply to "family quarrels and neighborhood squabbles, corporate and governmental disagreement, collective bargaining, and international conferences."

Of course there are differences, and important ones, depending upon the subject under negotiation. Yet what Bill Ury and I were seeking — and often continue to seek — is the power that comes from general theory. A physicist advancing hypotheses about a general theory of matter does not deny differences among the elements. Like such a physicist, we have been looking for common concepts and a common structure that apply across the board. The assumption has been that those of us who focus our attention on one particular area, such as diplomacy, can learn much from those who work primarily in other areas.

Lord McCarthy's review of *Getting to YES* demonstrates the soundness

of that approach. Not that our general ideas will provide the right answer for each of his labor disputes. Rather, his review demonstrates how much we can learn from the experience and insight of those who deal with different substantive problems.

subject broadly. Many actions taken away from a table — ranging from making political speeches to building nuclear missiles — are taken for the purpose of "sending a message" to affect decisions of the other side.

The concept of "negotiating power" is more difficult. If I have negotiating power, I have the ability to affect favorably someone else's decision. This being so, one can argue that my power depends upon someone else's perception of my strength, so it is what they *think* that matters, not what I actually have. The other side may be as much influenced by a row of cardboard tanks as by a battalion of real tanks. One can thus say that negotiating power is all a matter of perception.

A general who commands a real tank battalion, however, is in a far stronger position than one in charge of a row of cardboard tanks. A false impression of power is extremely vulnerable, capable of being destroyed by a word. In order to avoid focusing our attention on how to deceive other people, it seems best at the outset to identify what constitutes "real" negotiating power — an ability to influence the decisions of others assuming they know the truth. We can then go on to recognize that, in addition, it will be possible at times to influence others through deception, through creating an illusion of power. Even for that purpose, we will need to know what illusion we wish to create. If we are bluffing, what are we bluffing about?

What Kind of Theory Are We Looking For?

An infinite number of truths exist about the negotiation process, just as an infinite number of maps can be drawn of a city. It is easy to conclude that negotiators who are more powerful fare better in negotiations. By and large, negotiators who have more wealth, more friends and connections, good jobs, and more time will fare better in negotiations than will those who are penniless, friendless, unemployed, and in a hurry. Such statements, like the statement that women live longer than men, are true — but they are of little help to someone who wants to negotiate, or to someone who wants to live longer. Similarly, the statement that power plays an important role in negotiation is true — but irrelevant.

As negotiators we want to understand power in some way that helps us. We want diagnostic truths that point toward prescriptive action. The statement that women live longer than men points toward no remedial action. I am unable to live longer by choosing to become a woman. On the other hand, the statement that people who don't smoke live longer than people who do smoke is no truer, but it is far more helpful since I can decide not to smoke.

Thus a lively interplay exists between descriptive and prescriptive theory. The pure scientist may not care whether his truths have any relevance to the world of action; he leaves that to others. But those of us who are primarily concerned with change (one hopes for the better) are searching for descriptive categories that have prescriptive significance. We are looking for ideas that will help us make better choices. We are not simply trying to describe accurately what happens in a negotiation; we are trying to produce advice of use to negotiators, advice that will help them negotiate better. We need to say something other than that powerful princes tend to dominate less powerful princes, as true as that may be. We are looking for the kind of theory that will help a prince. He, presumably, has two key questions with respect

to negotiating power: how to enhance negotiating power and how to use such power as he may have.

Mistaken Views of Negotiating Power

(1) "Physical Force = Negotiating Power"

It is widely believed that in order to enhance our negotiating power we should acquire such assets as a strike-fund, a band of terrorists, or 100 MX missiles, which convey an implicit or explicit threat to harm the other side physically if it fails to agree with us. This belief is based on the assumption that, since threats of physical force undoubtedly exert influence, the ability to make such threats is the essence of negotiating power. Force is seen as the necessary and sufficient element of negotiating power.

Negotiating power is the ability to influence others. The pain that we threaten to inflict if the other side does not decide as we like is simply one factor among many. And as I have written elsewhere, making threats is a particularly expensive and dangerous way of trying to exert influence.[1]

Total negotiating power depends upon many factors. Enhancing negotiating power means building up the combined potential of them all. Exercising negotiating power effectively means orchestrating them in a way that maximizes their cumulative impact. And this is where a second, widely held assumption about negotiating power appears to be mistaken and dangerous.

(2) "Start tough, you can always get soft later."

There is a widespread belief that the best way to start a negotiation is with a hard line. "Let them know early who's in charge." The thought is that since, in the last analysis, physical power may be the decisive factor, the entire negotiation should take place governed by its shadow. Conventional wisdom insists that it is easier to soften one's position than to harden it. A negotiator is encouraged to start off flexing his muscles.

Alan Berger, reviewing Seymour Hersch's *Kissinger in the White House*, emphasizes this feature of Nixon's foreign policy. "Nixon's first impulse was to attempt to intimidate his adversaries." He was anxious to "get tough," to "seem tough," to "be tough." "The nuclear option was not an ultimate recourse to be considered only *in extremis*; it was, as Hersch persuasively demonstrates, the point of departure..." (*Boston Globe* 19 June 1983).

President Reagan appears to be operating on a similar assumption with respect to negotiating power. We begin with a threat. We seek to influence the Soviet Union with respect to intermediate-range nuclear missiles in Europe by starting off with a public commitment that U.S. Pershing II missiles will be deployed in Europe before the end of 1983 unless by that time the Soviet Union has agreed to withdraw all its missiles from Europe, on terms acceptable to us.

The notion that it is best to start off a negotiation with a warning or threat of the consequences of nonagreement may result from a false analogy. Other things being equal, it is true that, in purely positional bargaining, the more extreme one's initial position (the higher a price one demands or the lower a price one offers), the more favorable an agreed result is likely to be. But opening with a very low substantive offer is quite different from opening with a threat of painful consequences if that offer is not accepted. The more

firmly one is committed at an early stage to carrying out a threat, the more damaging that threat is to one's negotiating power.

If these two propositions are wrong, how should someone enhance and exercise negotiating power?

Categories of Power

My ability to exert influence depends upon the combined total of a number of different factors. As a first approximation, the following six kinds of power appear to provide useful categories for generating prescriptive advice:

(1) The power of skill and knowledge

(2) The power of a good relationship

(3) The power of a good alternative to negotiating

(4) The power of an elegant solution

(5) The power of legitimacy

(6) The power of commitment

Here is a checklist for would-be negotiators of what they can do in advance of any particular negotiation to enhance their negotiating power. The sequence in which these elements of power are listed is also important.

1. The Power of Skill and Knowledge

All things being equal, a skilled negotiator is better able to influence the decision of others than is an unskilled negotiator. Strong evidence suggests that negotiating skills can be both learned and taught. One way to become a more powerful negotiator is to become a more skillful one. Some of these skills are those of dealing with people: the ability to listen, to become aware of the emotions and psychological concerns of others, to empathize, to be sensitive to their feelings and one's own, to speak different languages, to communicate clearly and effectively, to become integrated so that one's words and nonverbal behavior are congruent and reenforce each other, and so forth.

Other skills are those of analysis, logic, quantitative assessment, and the organization of ideas. The more skill one acquires, the more power one will have as a negotiator. These skills can be acquired at any time, often far in advance of any particular negotiation.

Knowledge is also power. Some knowledge is general and of use in many negotiations, such as familiarity with a wide range of procedural options and awareness of national negotiating styles and cultural differences. A repertoire of examples, precedents, and illustrations can also add to one's persuasive abilities.

Knowledge relevant to a particular negotiation in which one is about to engage is even more powerful. The more information one can gather about the parties and issues in an upcoming negotiation, the stronger one's entering posture. The following categories of knowledge, for example are likely to strengthen one's ability to exert influence:

Knowledge about the people involved. What are the other negotiators' personal concerns, backgrounds, interests, prejudices, values, habits, career hopes, and so forth? How would we answer the same questions with respect to those on our side?

Knowledge about the interests involved. In addition to the personal concerns of the negotiators, what additional interests are involved on the other side? what are their hopes, their fears, their needs? And what are the interests on our side?

Knowledge about the facts. It is impossible to appreciate the importance of unknown facts. Time permitting, it is usually worthwhile to gather a great deal of unnecessary information about the subject under negotiation in order to gather a few highly relevant facts. The more one knows about the history, geography, economics, and scientific background of a problem, as well as its legal, social, and political implications, the more likely it is that one can invent creative solutions.

It takes time and resources to acquire skill and knowledge; it also takes initiative and hard work. Lawyers who would never think of walking into a trial without weeks of preparation will walk into a negotiation with almost none: "Let's see what they have to say." Yet the lawyer would help his client more in persuading the other side next week than in persuading a judge next year. The first way to enhance one's negotiating power is to acquire in advance all the skill and knowledge that one reasonably can.

2. *The Power of a Good Relationship*

The better a working relationship I establish in advance with those with whom I will be negotiating, the more powerful I am. A good working relationship does not necessarily imply approval of each other's conduct, though mutual respect and even mutual affection — when it exists — may help. The two most critical elements of a working relationship are, first, trust, and second, the ability to communicate easily and effectively.

Trust. Although I am likely to focus my attention in a given negotiation on the question of whether or not I can trust those on the other side, my power depends upon whether they can trust me. If over time I have been able to establish a well-deserved reputation for candor, honesty, integrity, and commitment to any promise I make, my capacity to exert influence is significantly enhanced.

Communication. The negotiation process is one of communication. If I am trying to persuade some people to change their minds, I want to know where their minds are; otherwise, I am shooting in the dark. If my messages are going to have their intended impact, they need to be understood as I would have them understood. At best, interpersonal communication is difficult and often generates misunderstanding. When the parties see each other as adversaries, the risk of miscommunication and misunderstanding is greatly increased. The longer two people have known each other, and the more broadly and deeply each understands the point of view and context from which the other is operating, the more likely they can communicate with each other easily and with a minimum of misunderstanding.

Each side benefits from this ability to communicate. We may have interests that conflict, but our ability to deal with those conflicting interests at minimum risk and minimum cost is enhanced by a good working relationship. Two men in a lifeboat at sea quarrelling over limited rations have sharply conflicting interests. But the longer they have known each other, the more dealings they have had, and the more they speak the same language, the more

likely they are to be able to divide the rations without tipping over the boat. The ability of each to affect favorably the other's decision is enhanced by an ability to communicate. More power for one is consistent with more power for the other.

A good working relationship is so helpful to the negotiation of satisfactory outcomes that it is often more important than any particular outcome itself. A banker, for example, is often like a person courting. The prospect of a satisfactory relationship is far more important than the terms of a particular loan or a particular date. A relationship which provides a means for happily resolving one transaction after another becomes an end in itself. Particular substantive negotiations become opportunities for cooperative activity that builds the relationship.

The same is true internationally. A better working relationship between the Soviet Union and the United States would facilitate the negotiation of particular arms control agreements. Even more important, having a better working relationship would enhance the security of each country more than would the outcome of any particular treaty. The better the working relationship we develop with the Soviet Union, the more likely they are to heed what we have to say.

3. The Power of a Good Alternative to Negotiation

To a significant extent, my power in a negotiation depends upon how well I can do for myself if I walk away. In *Getting to YES*, we urge a negotiator to develop and improve his "BATNA" — his Best Alternative To a Negotiated Agreement. One kind of preparation for negotiation that enhances one's negotiating power is to consider the alternatives to reaching agreement with this particular negotiating partner, to select the most promising, and to improve it to the extent possible. This alternative sets a floor. If I follow this practice, every negotiation will lead to a successful outcome in the sense that any result I accept is bound to be better than anything else I could do.

In the case of buying or selling, my best alternative is likely to result from dealing with a competitor. Obtaining a firm offer from such a competitor in advance of a proposed negotiation strengthens my hand in that negotiation. The better the competing offer, the more my hand is strengthened.

In other cases, my best alternative may be self-help. What is the best I can do on my own? If the two boys offering to shovel the snow off the front walk are asking an exorbitant price, my best alternative may be to shovel the walk myself. To think about that option, and to have a snow shovel in the basement, strengthens my hand in trying to negotiate a fair price with the boys.

The less attractive the other side's BATNA is to them, the stronger my negotiating position. In negotiation with my son to cut the lawn, I may discover that he lacks interest in earning a little pocket money: "Dad," he says, "you leave your wallet on your bureau and if I need a little money I always borrow some." My son's best alternative to a negotiated agreement to cut the lawn is to get the same amount or even more for doing nothing. To enhance my negotiating power, I will want to make his BATNA less attractive by removing that alternative. With my wallet elsewhere, he may be induced to earn some money by cutting the lawn.

with various techniques for making a constraint more binding, but only with the content of the commitment itself. Advance planning can enhance my power by enabling me to demonstrate convincingly that a commitment is unbreakable. (This subject, like all of those concerned with the difference between appearance and reality, is left for another day.) The one who makes the offer takes a risk. If he had waited, he might have gotten better terms. But in exchange for taking that risk, he has increased his chance of affecting the outcome.

A wise negotiator will formulate an offer in ways that maximize the cumulative impact of the different categories of negotiating power. The terms of an affirmative commitment will benefit from all the skill and knowledge that has been developed; the commitment benefits from the relationship and is consistent with it; it takes into account the walk-away alternatives each side has; the other will constitute a reasonably elegant solution to the problem of reconciling conflicting interests; and the offer will be legitimate — it will take into account considerations of legitimacy.

With all this power in its favor, there is a chance the offer will be accepted. No other form of negotiating power may be needed. But as a last resort, the negotiator has one other form of power: a negative commitment, or threat.

A negative commitment is the most controversial and troublesome element of negotiating power. No doubt, by tying my own hands I may be able to influence you to accept something more favorable to me than you otherwise would. The theory is simple. For almost every potential agreement, there is a range within which each of us is better off having an agreement than walking away. Suppose that you would be willing to pay $75,000 for my house if you had to; but for a price above that figure you would rather buy a different house. The best offer I have received from someone else is $62,000, and I will accept that offer unless you give me a better one. At any price between $62,000 and $75,000 we are both better of than if no agreement is reached. If you offer me $62,100, and so tie your hands by a negative commitment that you cannot raise your offer, presumably, I will accept it since it is better than $62,000. On the other hand, if I can commit myself not to drop the price below $75,000, you presumably will buy the house at that price. This logic may lead us to engage in a battle of negative commitments. Logic suggests that "victory" goes to the one who first and most convincingly ties his own hands at an appropriate figure. Other things being equal, an early and rigid negative commitment at the right point should prove persuasive.

Other things, however, are not likely to be equal.

The earlier I make a negative commitment — the earlier I announce a take-it-or-leave-it position — the less likely I am to have maximized the cumulative total of the various elements of my negotiating power.

The power of knowledge. I probably acted before knowing as much as I could have learned. The longer I postpone making a negative commitment, the more likely I am to know the best proposition to which to commit myself.

The power of a good relationship. Being quick to advance a take-it-or-leave-it position is likely to prejudice a good working relationship and to damage the trust you might otherwise place in what I say. The more quickly I con-

arbitrator, and should listen like such an arbitrator, always open to being persuaded by reason. Being open to persuasion is itself persuasive.

Like a lawyer preparing a case, a negotiator will discover quite a few different principles of fairness for which plausible arguments can be advanced, and often quite a few different ways of interpreting or applying each principle. A tension exists between advancing a highly favorable principle that appears less legitimate to the other side and a less favorable principle that appears more legitimate. Typically, there is a range within which reasonable people could differ. To retain his power, a wise negotiator avoids advancing a proposition that is so extreme that it damages his credibility. He also avoids so locking himself into the first principle he advances that he will lose face in disentangling himself from that principle and moving on to one that has a greater chance of persuading the other side. In advance of this process, a negotiator will want to have researched precedents, expert opinion, and other objective criteria, and to have worked on various theories of what ought to be done, so as to harness the power of legitimacy — a power to which each of us is vulnerable.

6. The Power of Commitment

The five kinds of power previously mentioned can each be enhanced by work undertaken in advance of formal negotiations. The planning of commitments and making arrangements for them can also be undertaken in advance, but making commitments takes place only during what everyone thinks of as negotiation itself.

There are two quite different kinds of commitments — affirmative and negative:

(a) Affirmative commitments

(1) An offer of what I am willing to agree to.

(2) An offer of what, failing agreement, I am willing to do under certain conditions.

(b) Negative commitments

(1) A commitment that I am unwilling to make certain agreements (even though they would be better for me than no agreement).

(2) A commitment or threat that, failing agreement, I will engage in certain negative conduct (even though to do so would be worse for me than a simple absence of agreement).

Every commitment involves a decision. Let's first look at affirmative commitments. An affirmative commitment is a decision about what one is willing to do. It is an offer. Every offer ties the negotiator's hands to some extent. It says, "This, I am willing to do." The offer may expire or later be withdrawn, but while open it carries some persuasive power. It is no longer just an idea or a possibility that the parties are discussing. Like a proposal of marriage or a job offer, it is operational. It says, "I am willing to do this. If you agree, we have a deal."

We have all felt the power of a positive commitment — the power of an invitation. (We are not here concerned with the degree of commitment, or

front you with a rigid position on my part, the more likely I am to make you so angry that you will refuse an agreement you might otherwise accept.

The power of a good alternative. There is a subtle but significant difference between communicating a warning of the course of action that I believe it will be in my interest to take should we fail to reach agreement (my BATNA), and locking myself in to precise terms that you must accept in order to avoid my taking that course of action. Extending a warning is not the same as making a negative commitment. If the United States honestly believes that deploying one hundred MX missiles is a vital part of its national security, then letting the Soviet Union know that in the absence of a negotiated agreement we intend to deploy them would appear a sound way of exerting influence. In these circumstances, the United States remains open to considering any negotiated agreement that would be better for us than the MX deployment. We are not trying to influence the Soviet Union by committing ourselves to refuse to accept an agreement that would in fact be in our interest (in hopes of getting one even more favorable to us). We are simply trying to influence them with the objective reality that deployment seems to be our best option in the absence of agreement.

Two kinds of negative commitments are illustrated by the MX case. One is the example of Mr. Adelman's letter, which apparently described the only possible agreement that the United States was willing to accept. His letter appeared to commit the United States to refusing to agree to any treaty that did not commit the Soviet Union "to forego their heavy and medium ICBMs" (*New York Times*, 26 June 1983). This was an apparent attempt to influence the Soviet Union by making a public commitment about what the United States would not do — we would not take anything less than a Soviet agreement to dismantle all its heavy and medium missiles in exchange for a United States promise not to add 100 MX missiles to our arsenal.

The second kind of negative commitment is illustrated by the MX case if one assumes, as many of us believe, that deploying 100 MX missiles does not really enhance U.S. security but rather damages it. The proposed deployment is bad for us; perhaps worse for the Soviet Union. On this assumption, the threat to deploy the MX missiles is like my trying to influence a fellow passenger by threatening to tip over a boat whether or not I am the better swimmer. Tipping over the boat will be bad for both of us, perhaps worse for him. I am committing myself to do something negative to both of us in the hope of exerting influence. If I make such a commitment, it is because I hope that by precluding myself from acting in some ways that would be in my interest, I will be able to achieve a result that is even more favorable.

To make either kind of negative commitment at an early stage of the negotiation is likely to reduce the negotiating power of a good BATNA. It shifts the other side's attention from the objective reality of my most attractive alternative to a subjective statement that I won't do things that (except for my having made the commitment) would be in my interest to do. Such negative commitments invite the other side to engage in a contest of will by making commitments that are even more negative, and even more difficult to get out of. Whatever negotiating impact my BATNA may have, it is likely to be lessened by clouding it with negative commitments. This is demonstrated by Deputy Secretary of State Kenneth Dam's insistence (following Mr. Adelman's

ill-fated letter) that the MX "is not a bargaining chip in the sense that we are just deploying it for purposes of negotiation. It is a vital part of our national security." That statement implicitly recognizes that a statement made for negotiating reasons is likely to exert less influence at the negotiating table than would a good alternative away from the table. Mr. Dam's statement also reflects recognition on the part of the United States that a premature negative commitment weakens rather than strengthens our negotiating power.

The power of an elegant solution. The early use of a negative commitment reduces the likelihood that the choice being considered by the other side is one that best meets its interests consistent with any given degree of meeting our interests. If we announce early in the negotiation process that we will accept no agreement other than Plan X, Plan X probably takes care of most of our interests. But it is quite likely that Plan X could be improved. With further study and time, it may be possible to modify Plan X so that it serves our interests even better at little or no cost to the interests of the other side.

Second, it may be possible to modify Plan X in ways that make it more attractive to the other side without in any way making it less attractive to us. To do so would not serve merely the other side but would serve us also by making it more likely that the other side will accept a plan that so well serves our interests.

Third, it may be possible to modify Plan X in ways that make it much more attractive to the other side at a cost of making it only slightly less attractive to us. The increase in total benefits and the increased likelihood of quickly reaching agreement may outweigh the modest cost involved.

Premature closure on an option is almost certain to reduce our ability to exert the influence that comes from having an option well crafted to reconcile, to the extent possible, the conflicting interests of the two sides. In multilateral negotiations it is even less likely that an early option will be well designed to take into account the plurality of divergent interests involved.

The power of legitimacy. The most serious damage to negotiating power that results from an early negative commitment is likely to result from its damage to the influence that comes from legitimacy. Legitimacy depends upon both process and substance. As with an arbitrator, the legitimacy of a negotiator's decision depends upon having accorded the other side "due process." The persuasive power of my decision depends in part on my having fully heard your views, your suggestions, and your notions of what is fair before committing myself. And my decision will have increased persuasiveness for you to the extent that I am able to justify it by reference to objective standards of fairness that you have indicated you consider appropriate. That factor, again, urges me to withhold making any negative commitment until I fully understand your views on fairness.

The power of an affirmative commitment. Negative commitments are often made when no affirmative commitment is on the table. The Iranian holders of the hostages in Tehran said for months that they would not release the hostages until the United States had adequately atoned for its sins and had met an unambiguous set of additional demands. No clear offer was given by Iran, and the United States, accordingly, was under no great pressure to do any

particular thing. During the Vietnam War, the United States similarly failed to offer those on the other side any clear proposition. We would not leave, we said, until North Vietnam agreed "to leave its neighbors alone" — but no terms were on the table; no offer, no affirmative commitment was given.

Once an affirmative commitment is on the table, the negotiator must make sure that the varied elements of the communication are consistent with each other. No matter what the magnitude of a threat, it will have little effect unless it is constructed so that the sum total of the consequences of acceptance are more beneficial to the other side than is the sum total of the consequences of rejection. While negotiators frequently try to increase power by increasing the magnitude of a threat, they often overlook the fact that increasing the favorable consequences of acceptance can be equally important.

But no matter how favorable the consequences of acceptance are to the other side, and how distasteful the consequences of rejection, the proposition will carry little impact if the various implications of timing have not been thought through as well. Just as my son will look at me askance if I tell him that unless he behaves next week he will not be permitted to watch television tonight, so the North Vietnamese were unable to comply when the United States said, in effect, "If over the next few weeks you haven't reduced support for opponents of South Vietnam, we will bomb you tomorrow." The grammar must parse. (See Fisher, 1969.)

To make a negative commitment either as to what we will not do or as to what harsh consequences we will impose unless the other side reaches agreement with us, without having previously made a firm and clear offer, substantially lessens our ability to exert influence. An offer may not be enough, but a threat is almost certainly not enough unless there is a 'yesable' proposition on the table — a clear statement of the action desired and a commitment as to the favorable consequences which would follow.

Conclusion

This analysis of negotiating power suggests that in most cases it is a mistake to attempt to influence the other side by making a negative commitment of any kind[2] at the outset of the negotiations, and that it is a mistake to do so until one has first made the most of every other element of negotiating power.

This analysis also suggests that when as a last resort threats or other negative commitments are used, they should be so formulated as to complement and reinforce other elements of negotiating power, not undercut them. In particular, any statement to the effect that we have finally reached a take-it-or-leave-it position should be made in a way that is consistent with maintaining a good working relationship, and consistent with the concepts of legitimacy with which we are trying to persuade the other side. For example, I might say:

> "Bill, I appreciate your patience. We have been a long time discussing the sale of my house, and I believe that we each fully understand each other's concerns. We have devised a draft contract which elegantly reconciles my interest in a firm deal, adequate security, and reasonable restrictions to protect the neighbors, with your interest in being able to move in early, to stretch out the payments,

and to have your professional office in the house. The only open issue is price. On that we have discussed various criteria, such as market value based on recent sales, providing me a fair return on my investment, and value based on professional estimates of replacement cost depreciated for wear and tear. These criteria produce figures ranging from $73,000 down to $68,000. I have offered to sell you the house for $70,000.

"Your response, as I understand it, is to say that you will pay no more than $100 above the best written offer I have from another potential buyer, now $62,000. Knowing that you would pay $75,000 if you had to, I am unable to understand why you should get all but $100 of the advantage of our shared interest in my selling and your buying the house. Nor, as we have discussed, do I think it a wise practice for me to defer to what looks to me like an arbitrary commitment.

"The transaction costs of further discussion would appear to outweigh any potential advantage. Unless you have something further you would like to say now, or unless you would like to try to convince me that this procedure is unfair, I hereby make a final offer of $68,000, the lowest figure I believe justified by objective criteria. Let me confirm that offer now in writing and commit myself to leaving that offer open for three days. Unless something wholly unexpected comes up, I will not sell the house to you for less. Please think it over.

"In any event, let's plan to play golf on Saturday afternoon if you are free."

A great deal of work remains to be done toward formulating the best general advice that can be given to help a negotiator increase his or her ability to influence others. Some of that work relates to what can be done to acquire power in advance of a negotiation; much relates to how best to use such power as one has. No attempt has been made to advance propositions that will be true in every case, only to advance rules of thumb that should be helpful in many cases. So far, I have been unable to come up with any better rules of thumb covering the same ground.

As indicated at the outset, this article does not cover the kind of negotiating power that comes from creating in the mind of others an impression that is false — from bluffing, deceit, misrepresentation, or other such act or omission. For the moment, I remain unconvinced that the best advice for a negotiator would include suggestions of how to create a false impression in the mind of the other side, any more than I would advise young lawyers on how best to create a false impression in the mind of a judge or arbitrator. But that is a subject for another day.

NOTES

1. See "Making Threats Is Not Enough," Chapter Three in *International Conflict for Beginners* (Fisher, 1969).

2. On reading this article, Douglas Stone of the Harvard Law School suggested that there may be one kind of negative commitment that could be made at the outset of negotiations without damage to the relationship, to legitimacy, or to other elements of one's total power. This might be done by establishing an early commitment never to yield to unprincipled threats. I might, for example, make a negative commitment that I would not respond to negative commitments but only to facts, objective criteria, offers, and reasoned argument. Like an advance commitment not to pay blackmail, such a negative commitment is consistent with legitimacy. In fact, one might propose that both sides make mutual commitments not to respond to threats. An early commitment not to respond to threats might, if convincingly made, preemptively foreclose threats from the other side.

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